

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0303P  
Gross Income Tax and Adjusted Gross Income Tax  
Calendar Years 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, incorporated under the laws of Delaware on November 23, 1970 was audited for calendar years 1986 through 1995. Upon audit it was discovered that the taxpayer failed to file income tax returns and generated receipts from the leasing of material handling equipment to Indiana residents.

Taxpayer requests that the department waive the negligence penalty.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a negligence penalty because it failed to file income tax returns and report gross and apportioned adjusted gross income for calendar years 1986 through 1995.

Taxpayer, in a letter dated May 8, 1998 protested penalties assessed due to reasonable cause and states it was not negligent for the following reasons:

- 1) The company is incorporated in Delaware and is located in Greene, NY
- 2) The company does not maintain an office in Indiana
- 3) The company has no inventory or consigned property in Indiana

- 4) The company does not own or lease real estate in Indiana
- 5) The company has no employees within Indian
- 6) The company does not advertise, is not listed in the telephone book,  
nor does it solicit business in Indiana

Taxpayer maintains the above reasons caused them to believe they were not engaged in business activity in the state of Indiana; and because of different interpretations by the corporation, the Indiana Department of Revenue and other jurisdictions, the question of corporate tax liability was contested.

45 IAC 1-1-28 defines rental income as any payment, in cash or other form, for the possession or use of real or tangible personal property for a limited period of time. The gross receipts, without any deductions, derived from the lease or rental of real or tangible personal property, whether actually or constructively received, are taxable at the higher rate under IC 6-2-1-3-(g). Taxpayer is taxable under this code and regulation. Antithetically, under 45 IAC 1-1-50, Indiana taxpayers are taxable in the state in which they rent or lease property because the rental or lease establishes a business situs out of state. In the taxpayer's case, the rental and leasing of material handling equipment to Indiana residents establishes a business situs in Indiana.

Taxpayer failed to file returns for all years of the audit therefore the negligence penalty is appropriate.

### **FINDING**

Taxpayer's protest is denied.